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Senate Economics Legislation Committee
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Your Ref:

Our Ref:

Date: 15 June 2010

Dear Mr Hawkins,

Inquiry into Tax Laws Amendment (Public Benefit Test) Bill 2010

Thank you for the opportunity to contribute to this inquiry which proposes the introduction of a requirement that religious and charitable organisations meet a public benefit test to qualify for tax exempt status.

For centuries, the need to have purposes that are for the public benefit has been a fundamental characteristic of what makes a charity a charity in England and Wales. Although we have no statutory definition of public benefit, the principles of public benefit can be derived from four hundred years of charity case law.

In 2006, the UK Parliament passed new legislation in the form of the Charities Act 2006 which, amongst other provisions, highlighted the existing public benefit requirement by including public benefit in the definition of a charitable purpose. Prior to the implementation of the Charities Act, charities with aims for the relief of poverty or the advancement of education or religion benefitted from a presumption in charity law that those aims were for the public benefit, unless there was evidence to the contrary. The Charities Act removed that presumption, creating a level playing field in which all charities' aims must be, demonstrably, for the public benefit.

The Charities Act 2006 gives the Charity Commission a new statutory objective to promote awareness and understanding of the operation of the public benefit requirement, including issuing guidance on what the public benefit requirement means, and it requires charity trustees to have regard to our guidance and report annually on their charity's public benefit.

The Charity Commission has distilled the key principles of public benefit from the relevant case law and, following wide public consultation, set them out in our general public benefit guidance, *Charities and Public Benefit*. The legal basis for those principles is explained in our *Analysis of the law underpinning Charities and Public Benefit*. We have also issued supplementary guidance for

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charities with aims for the relief of poverty or the advancement of education or religion, and for charities that charge fees for their services or facilities. All of our public benefit guidance is available on our website at

http://www.charitycommission.gov.uk/Charity_requirements_guidance/Charity_essentials/Public_benefit/default.aspx

We have also conducted a series of public benefit assessments of individual charities, including four charities for the advancement of religion, three fee-charging residential care homes and five fee-charging charitable independent schools. Our published reports of those individual assessments and the emerging findings for charity trustees are also available on our website.

We say in our guidance, *Charities and Public Benefit*:

"There is a kind of covenant that charities have with society: charities bring public benefit and, in their turn, are accorded high levels of trust and confidence and the benefits of charitable status. These mutual benefits are considerable: charities receive significant tax advantages; they can access funds which others - even other voluntary organisations - cannot; volunteers and donors give, respectively, time and money. Society is enriched immeasurably by the activities of charities.

Being a charity is not the same as being an organisation that does 'good things'. Charity has an outward, inclusive nature: it is not inward-looking, for private benefit. Only organisations with aims that are charitable for public benefit are accorded the charity label."

This goes to the heart of why the public benefit requirement has remained an essential characteristic of charity in England and Wales for so many years, and what it is that continues to make charities so respected, valued and supported by the public at large.

I hope that this is of assistance to your inquiry.

Yours sincerely,

Rosie Chapman